

11

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

4 LINDA DEATON, )  
5 Plaintiff, ) CIVIL NO. 01-352 SPK/BMK  
6 vs. )  
7 )  
8 CHEVY CHASE BANK, ) VOLUME V  
9 a corporation, BANK ONE, ) (Pages 1 - 70)  
10 a corporation, and JANE )  
11 DOES 1-10 and JOHN DOES )  
12 1-10, DOE CORPORATION 1-10,)  
and DOE GOVERNMENTAL )  
ENTITIES 1-10, )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS

16 The above-entitled matter came on for FURTHER  
17 JURY TRIAL commencing at 10:00 a.m. on Friday, April  
18 18, 2003, Honolulu, Hawaii,

20 BEFORE: HONORABLE SAMUEL P. KING  
21 United States District Judge  
22 District of Hawaii

24 REPORTED BY: LISA J. GROULX, COURT REPORTER  
25 Notary Public. State of Hawaii

1 acquire Linda Deaton's account?

2 A. It was October of 1998.

3 Q. And when did Ms. Deaton serve her complaint  
4 in this case on Bank One?

5 A. We received the notice through the mail  
6 August of 2001.

7 Q. Now have you checked your records at Bank One  
8 to see if prior to August 2001 there was any inquiry  
9 made by a CRA about Linda Deaton?

10 A. Yes, and we could not find any record  
11 indicating there was an inquiry.

12 Q. And what did you check to make sure that was  
13 true?

14 A. We check all of our internal systems for any  
15 sort of auto trail and also document retrieval system.

16 Q. And what did you find?

17 A. We had no evidence of any contact or inquiry.

18 Q. There's been some allegation that in October  
19 of 1999 there was a credit inquiry. Are you familiar  
20 with that allegation?

21 A. Yes, I saw that during the trial.

22 Q. How can you be sure that your system does not  
23 show any inquiry coming in in October 1999?

24 A. Our legal department was required to review  
25 all systems associated with that and they had no

1 results in terms of any audit trail.

2           In addition to that, the correspondence that  
3 I saw in the trial indicated that it was, I believe,  
4 Credit Bureau of the Pacific. And it is my  
5 understanding that normally they would contact one of  
6 the three main bureaus directly.

7           Q. So, in other words, Credit Bureau of the  
8 Pacific couldn't electronically send a message to Bank  
9 One?

10          A. Not to my knowledge. That's not the way our  
11 system is set up.

12          Q. So if some credit reporting agency wanted to  
13 contact Bank One to get information about Linda  
14 Deaton, you're saying it would have to come from one  
15 of the three names: Experian, TransUnion or Equifax?

16          A. That is correct, unless we have the exception  
17 from Ms. Deaton.

18          Q. So Credit Bureau of the Pacific, for example,  
19 as you indicated, is like a sub agency not a national  
20 agency. They have to send a signal to one of those  
21 three, then one of those three would come to you,  
22 unless there were some special circumstances?

23          A. That is my understanding. It is difficult  
24 for me to testify to exactly what their procedures  
25 are, so.

1           Q. Admitted into evidence in this case,  
2 Ms. Herrera, were Exhibits 103 and 104, which,  
3 according to the plaintiff and the records depositions  
4 of TransUnion and Equifax -- have you reviewed those  
5 exhibits?

6           A. I believe so.

7           Q. Did you find anything in those exhibits that  
8 showed that there was any credit inquiry in October of  
9 1999 between them and Bank One?

10          A. No. And I reviewed that information again  
11 last night. So I didn't see anything from the October  
12 time frame.

13          Q. So, as far as the records of Bank One show no  
14 contact or inquiry by CRA, and the records that we've  
15 looked at for TransUnion and Equifax show no contact  
16 in October '99.

17          A. That not I interpreted on their reporting.

18          Q. And those records would have been captured if  
19 there had been an inquiry into your electronic system?

20          A. Based on the deposition that I read, they  
21 indicated that they had captured all of the  
22 information.

23          Q. Thank you. Let's go back to the exhibit that  
24 we were discussing yesterday, Exhibit 218, which is in  
25 evidence, defendants' Exhibit 218.

1 THE COURT: Okay.

2 MR. CHAPMAN: When they acquired the  
3 account in October 1998.

4 THE COURT: For whatever good they are,  
5 they are admitted into evidence over objection.

6 MR. CHAPMAN: Thank you, Your Honor.

7 (Defendants' Exhibit No. 219 received into  
8 evidence.)

9 THE COURT: I count 9 sheets. Maybe  
10 that's -- maybe I missed one. Well, nobody can read  
11 that. So why don't you just go ahead.

12 MR. CHAPMAN: Thank you, Your Honor.

13 Q. (By Mr. Chapman) So it was in February 2002  
14 that the two credit reporting agencies contacted Bank  
15 One, right?

16 A. That is correct.

17 Q. Can you please describe what Bank One did  
18 when the two credit reporting agencies, CRAs, made  
19 these inquiries?

20 A. We review the information in our system to  
21 ensure that the data is accurate. We then send a  
22 response to the Bureau, typically within a 7 day time  
23 frame, because the credit bureaus only have  
24 approximately 30 days to complete the entire  
25 investigation in order to be in accordance with the

1 FCRA requirements.

2 So they create the record when Ms. Deaton  
3 contacts them. They then have to set up their  
4 transmission to us. We need to extract the  
5 transmission. We need to deliver it to the financial  
6 service advisor's desk top, allow them time to  
7 research, and then gather the data back and send it  
8 back to the Credit Bureau.

9 Q. And what time frame do you have to complete  
10 that?

11 A. Well, we have an internal standard of 7 days.  
12 We have gone as long as 14 days, depending upon that  
13 high volume period.

14 Q. In this case, when that inquiry came in from  
15 TransUnion and Equifax, what data did the Bank One  
16 personnel review in order to be able to respond?

17 A. Well, again, we review our internal systems  
18 to ensure there aren't any open disputes on the  
19 account and we validate the balance, in this case,  
20 through the Recovery Management System.

21 Q. And what was the response that was given to  
22 the two credit reporting agencies?

23 A. We did confirm that the balance was charged  
24 off at the \$7,854.

25 Q. And that the account was correctly stated on

1 they have, in total, to respond back to her about the  
2 inquiry?

3 A. I don't know about the response time period.  
4 I know it's my understanding that there is a 30 day  
5 time frame for investigation and resolution of the  
6 claim.

7 Q. So, in that 30 days, the consumer asked the  
8 CRA to check -- go back and double check the credit,  
9 then you have to check it, respond to the CRA, and the  
10 CRA responds back to the consumer in 30 days?

11 A. That is correct.

12 Q. Now after that, after February 2002, were  
13 there any other changes to Linda Deaton's account made  
14 by Bank One?

15 A. Yes. In March of 2002, a paralegal in our  
16 legal department did delete the trade line from all  
17 three bureaus.

18 THE COURT: Did what?

19 THE WITNESS: Deleted the trade line  
20 from all three credit reporting agencies.

21 THE COURT: Deleted the information  
22 which you had sent earlier?

23 THE WITNESS: Yes.

24 Q. (By Mr. Chapman) The court's question was you  
25 deleted the information which you sent earlier. Can

1 you please explain what you mean by deleted trade  
2 line?

3 A. Yes. In our legal department, lacking all  
4 details surrounding the lawsuit, we felt it prudent to  
5 take the conservative approach and delete those trade  
6 lines?

7 Q. So if Ms. Deaton had investigated her credit  
8 after March 2002, insofar as Bank One's information,  
9 what would show up on the credit report?

10 A. There would be no evidence that a trade line  
11 ever existed.

12 Q. So the inquiry came in February 2002, you  
13 responded that the account was correctly stated. And  
14 March 2002 deleted it all together?

15 A. That is correct.

16 Q. So what would the current status be then  
17 after March -- or what would the status be after March  
18 2002 as far as Bank One's credit card information  
19 showing up on Linda Deaton's credit?

20 A. It should be non existent. Internal to our  
21 system, it would still be a loss for the bank but it  
22 would be non existent to the credit reporting  
23 agencies.

24 Q. So it's fair to say that after March 2002 no  
25 one would have any information about that First

1 U.S.A./Chevy Chase Bank account any longer on the  
2 credit information of Linda Deaton?

3 A. That is my understanding. The credit bureaus  
4 would need to clarify that.

5 MR. CHAPMAN: Thank you, Your Honor. No  
6 other questions.

7 THE COURT: Cross-examine.

8 CROSS-EXAMINATION

9 BY MR. PHILLIPS:

10 Q. Ms. Herrera, would you take a look at the  
11 defendants exhibits, and in there -- and I don't have  
12 them number because mine are alphabetized, but there  
13 is a copy of the Fair Credit Reporting Act.

14 Would you turn to that? I would say it to be  
15 about midway through. Mine is letter N. So maybe that  
16 would be about 13 down.

17 A. 13 down?

18 THE COURT: You don't have the exhibit  
19 number? Can you help us with an exhibit number?

20 THE WITNESS: I found it.

21 THE CLERK: Is it 213?

22 THE CLERK: 213.

23 Q. (By Mr. Phillips) So Exhibit 213,  
24 Ms. Herrera, do you have that?

25 A. Yes, I do.

1                   THE COURT: Let's put it this way. Why  
2 don't you make an offer of proof. What is she going  
3 to say?

4                   MR. PHILLIPS: She is going to testify  
5 that she received a request for a residential mortgage  
6 credit check.

7                   THE COURT: It is in evidence.

8                   MR. PHILLIPS: The application for the  
9 loan is in evidence.

10                  THE COURT: Yeah.

11                  MR. PHILLIPS: And that when she  
12 received it, and she received the information from  
13 Linda Deaton on August of 1999 explaining that there  
14 was a dispute, she forwarded that information to one  
15 of the major three, which was Equifax in her  
16 situation, that Equifax sent it to the bank, that the  
17 bank did their --

18                  THE COURT: Which bank?

19                  MR. PHILLIPS: Chevy Chase or Bank One,  
20 whichever one is relevant.

21                  THE COURT: Which bank?

22                  MR. PHILLIPS: Actually, at that time I  
23 believe that report came back from Chevy Chase.

24                  THE COURT: Yeah.

25                  MR. PHILLIPS: And that it reported that

1 there was an investigation and no change.

2 THE COURT: You have that in evidence.

3 Don't you have that in evidence?

4 MR. PHILLIPS: We have the letter back  
5 that said it was reinvestigated and there will be no  
6 change.

7 THE COURT: So, what is she going to  
8 add?

9 MR. PHILLIPS: Well, I think she would  
10 make the jury feel a little more comfortable with the  
11 evidence that's available for them to consider on the  
12 question of the defendants' contention that a Credit  
13 Bureau of the Pacific never could send a request for  
14 an investigation to their bank because it was not one  
15 of the big three and, therefore, we didn't get it  
16 defense.

17 THE COURT: Do you object?

18 MS. MARTIN: Yes, Your Honor. And for  
19 the record, we would object to this witness being  
20 brought at that time because this is improper  
21 rebuttal. This is part of plaintiff's case in chief.  
22 Plaintiff had the burden, by the preponderance of the  
23 evidence, to show that a Fair Credit Reporting Act  
24 inquiry was triggered. This has come up over and over  
25 again. It was plaintiff's burden to prove that it

1 happened. To come back and rebuttal --

2 THE COURT: Well, we have in evidence  
3 that they did send in a request. We have in evidence  
4 that Nancy came back, and I just can't understand why  
5 you want somebody else to say the same thing.

6 MR. PHILLIPS: Well, Your Honor, I've  
7 stated my reasons on that. And it was, just for the  
8 report, it was the First U.S.A. Bank in 1999, October  
9 of 1999.

10 THE COURT: Who was?

11 MR. PHILLIPS: That was the name of the  
12 bank defendant who reported that the \$7,854 was a bad  
13 debt.

14 THE COURT: Well, is that there in the  
15 exhibits that you put in?

16 MR. PHILLIPS: It is, Your Honor. I  
17 just wanted to -- you asked me which bank and I'm just  
18 replying to you.

19 THE COURT: So you got that in evidence  
20 that they reported that they --

21 MR. PHILLIPS: Your Honor, it is the  
22 plaintiff's burden.

23 THE COURT: I'm trying to get this case  
24 over with.

25 MR. PHILLIPS: I understand that, Judge.